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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Seychelles

Addendum

Information received from Seychelles on follow-up to the concluding observations*

[Date received: 5 September 2017]

* The present document is being issued without formal editing.

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1. The Committee requests the State party to provide, within two years, that is by 9th September 2017, written information on the implementation of the recommendations contained in paragraphs 25, 33 and 37.

Paragraph 25 of the concluding observations

The Committee urges the State party:

(a) To collect data on the cases involving non-compliance with the principle of equal pay for work of equal value by employers of migrant workers, including sanctions imposed on non-compliant employers

2. One of the various functions of the Labour Monitoring and Compliance Section of the Ministry of Employment, Immigration and Civil Status is to conduct site inspections to verify compliance with the Employment Laws as well as Health and Safety Legislations. The types of visits which are conducted; Routine Visits, Follow Up visits and Investigations. Cases of Compliance and Non Compliance are detected through the different visits conducted in the various sectors of Industry stated in the table below.

Agriculture, forestry and fishing
Mining and quarrying
Manufacturing
Electricity, gas, steam and air conditioning supply
Water supply; sewerage, waste management and remediation activities
Construction
Wholesale and retail trade; repair of motor vehicles and motorcycles
Transportation and storage
Accommodation and food service activities
Information and communication
Financial and insurance activities
Real estate activities
Professional, scientific and technical activities
Administrative and support service activities
Public administration and defence; compulsory social security
Education
Human health and social work activities
Arts, entertainment and recreation
Other service activities
Activities of households as employers; undifferentiated goods
Activities of extraterritorial organizations and bodies

3. The Labour Monitoring and Compliance Section also collect statistics in regards to workplace accidents reported to the Ministry of Employment, Immigration and Civil Status which also involves migrant workers disaggregated by types and industries.

4. For the time being no data is being collected solely for the purpose of migrant workers and the question outlined above. However, no complaints of breaches of the principle of equal pay for work of equal value have been received from migrant workers.

(b) Ensure that migrant workers enjoy treatment not less favorable than that which applies to nationals in respect of remuneration and that this is strictly enforced through the conduct of regular and unannounced labour inspections in sectors where migrant workers are concentrated, particularly in the fishing, tourism and construction industries

5. The Employment Act 1995 and its Regulations is applicable to all workers working in Seychelles which include migrant workers. Section 46A of the Employment Act 1995 as amended by the Employment (Amendment) Act 2006, clearly states that "where an employment makes an employment decision against a worker on the grounds of the worker's age, gender, race, color, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, the worker may make a complaint to the Chief Executive stating all the relevant particulars" to ensure that migrant workers enjoy the same treatment and are given the same opportunity as local workers. The National Minimum Wage Regulations which regulates the minimum salary in Seychelles also apply to all workers in Seychelles. It is based on the working hours per week.

6. Frequent routine (announced and unannounced) inspections are conducted in all sectors to ensure that employers are complying with the employment legislation. During the inspection, the inspector checks the documents pertaining to the employment of all workers including migrant workers e.g. Contract of employment and pay slips to ensure that the provisions of the law are being respected. Furthermore there are instances whereby the inspectors request for signed proof of payment of bank transfer to ensure that the remuneration is as per the National requirement.

7. Furthermore, Section 18 of the Employment Act 1995 as amended by the Employment (Amendment) Act 2006 states that the contract of migrant workers shall be attested by the Competent Officer to ensure that the conditions are in accordance to the provisions of the law.

Paragraph 33 of the concluding observations

The Committee recommends that the State party:

(a) Provide detailed information on the procedures and cost of transferring earnings and savings, including data on remittances made by Seychellois migrant workers living abroad to their families in the State party

8. At present, a study is being undertaken on the remittance market in Seychelles, both inbound and outbound. It is anticipated that when the survey will be carried out, a copy of the study will be provided to you.

(b) Consider signing bilateral agreements with countries where Seychellois migrant workers are employed, with a view to protecting their rights under the Convention

9. In view of updating the Committee on the Convention on Protection of the Rights of all Migrant Workers and their Families, this recommendation is under due consideration by the Government of Seychelles, and provisions may be included in order to protect Seychelles citizens seeking employment abroad.

10. No specific agreements have been signed with other countries with regards to Seychellois working abroad, however we have bilateral agreements of a more general or mutual nature that provide for the possibility of exchange of technical expertise.

11. As a small country, Seychelles does not have a strong case for Labour Mobility. Overseas Seychellois workers commonly make their individual arrangements, they do not go through International Working Agencies nor respond to employers request in the country of destination. As a result, there is no bilateral agreement in this specific area. However, a Diaspora Survey is sorely needed in order to assess and understand the extent of the situation and identify the major countries of destination for Seychellois migrant workers, before initiating the process of signing bilateral agreements.

Paragraph 37 of the concluding observations

The Committee recommends that the State party:

(a) Systematically collect data, disaggregated by gender, age and origin, in order to effectively combat trafficking in human beings and exploitation of prostitution

12. There is no specific data in this category, however, the Ministry of Employment, Immigration and Civil Status will undertake national consultations to decide how to collect disaggregated data such as by gender, age, origin and complaint types.

13. There is no specific studies or surveys done in regards to trafficking of human being by the Ministry of Employment, Immigration and Civil Status. Therefore, in the future, surveys could be undertaken in regards to trafficking of human beings.

14. Similarly there is no data or studies undertaken on prostitutions, however, assistance are provided to these people to be in proper employment.

15. A human trafficking case was identified by the Ministry of Employment, immigration and Civil Status in June 2016. A report was submitted to the Department of Police for further investigation. At the beginning of the current year, the case was taken up by the Supreme Court and the judgment is presently ongoing. The migrant worker was working in the construction sector.

(b) Step up campaigns on the prevention of trafficking of migrant workers and encourage the private sector to adopt a "zero-tolerance" policy to sex tourism and to protect persons against trafficking and commercial sexual exploitation

16. There is no specific campaign taken against trafficking in persons. However, there are criteria/guidelines provided to employers/employees by the inspectorate officers. (Sensitizations materials are given to employers/employees on their rights during site visits and promotional Fairs, regarding labour conditions and health & Safety)

17. Posters/banners, leaflets and maybe media adverts will be proposed for future awareness. Furthermore, the Ministry of Employment, Immigration and Civil Status will undertake national discussions on the implementation of an act or a policy to prevent trafficking of migrant workers and to protect workers from trafficking in persons and commercial sexual exploitation.

(c) Improve the training of police officers and other law enforcement officials, border guards, judges, prosecutors, labour inspectors, teachers, health-care providers and the State party's embassy and consular personnel regarding the struggle against human trafficking

18. Five Officers from the Employment Department attended a two days validation workshop in SOP to report victims of TIP in May 2015 conducted by the UNODC;

19. An officer from the Ministry of Employment, Immigration and Civil Status attended the training of Trainers for Criminal Justice Practitioners on 3rd-6th August 2015, in Seychelles.

20. The Department of Foreign Affairs conducted a briefing session for its Honorary Consuls in October 2016 on the issue of trafficking in persons, with the aim of sensitizing on how to identify a potential case of trafficking in persons, in case a citizen of Seychelles abroad is in need of assistance.

21. Two Officers from the Employment Department will be attending a one week training in Botswana from 15th to 19th May 2017 on Child labour and Trafficking In Persons;

22. Two staff (one inspector, one prosecutor) from the Employment Department will be attending a one week training in Human Trafficking at the ILO Training Centre in May 2017 (22nd to 26th May).

(d) Strengthen mechanisms for investigating cases of trafficking in persons and prosecuting and punishing traffickers

Reporting of possible offences for Investigation

23. Complaints are lodged either through written communiqué, physical reporting of by means of telephone. It is then registered in a data base and referred to a respective Office to be investigated by way of a site visit. During investigation both staff and management are interviewed and followed by a letter which stipulates all anomalies needed to be rectified with timeframe. A follow up visit is done in order to ensure compliance with the law.

Identification of offences

24. Officers in their respective fields must investigate, determine and identify offence(s) committed by a person by referring to the following basic sources from which offences are derived:

- Employment Act 1995 — Part XI — Offences, Penalties and Prosecution, Section76 (1) (2)
- Conditions of Employment Regulations, 1991 — Regulations 8, 18, 25, 26, 49
- Occupational Safety & Health Decree — Section 36
- Occupational Safety and Health (Construction Industry, Confined Space and Welding) Regulations — Regulation 39
- Occupational Safety and Health (Miscellaneous) Regulations: — Regulation 7
- Occupational Safety and Health (Health and Welfare) Regulations: — Regulation 23

25. Officers must establish the legal name of the Offender. This can be achieved by doing a search at the Company Registrar. This is essential for documentation and legal purposes i.e. addressing the offender in a formal letter.

26. Officers must document in a case file all findings, records (letters, reports), witness statements and any other form of evidence pertaining to the offence/s. Officers must make sure all evidence is documented in a systematic way to show a clear chain of evidence. Officers must make sure the evidence is coherent and serves to prove the offence described in the above provisions of the sources. Officers needing advice on offences and evidence may also consult the Officers of the Prosecution Unit or raise the question in case discussions. Case files containing evidence of the offence/s must be properly compiled/documented, clear and concise, and serve to prove the offence before an Officer can seek legal action against an offender.

Authorization to commence legal action

27. Upon establishing the offence and compiling the evidence, approval must be sought from the Chief Executive to initiate legal action to prosecute an offender. The Chief Executive's approval is necessary to initiate legal action against an offender in accordance with Section 78(1) of the Employment Act 1995 only for offences established under Section 76 of the said Act and the Conditions of Employment Regulations, 1991. The Chief Executive's approval is not legally required to initiate legal action for offences established under the Occupational Safety & Health Decree or/and the Occupational Safety & Health Regulations, but the same protocol must be followed internally, therefore the Officer must make a formal written request in the case file before forwarding it to his or her director.

28. The Director will be responsible to ensure the case file meets the required standard and the above prerequisites (for prosecution) before forwarding the file to his or her Director General, where applicable.

29. The Director General, where applicable, will be responsible to verify the case file before it is forwarded to the Chief Executive.

30. The Chief Executive will give her written approval to initiate legal action against an offender before the case file is sent to the Director General Labour Relations.

31. The Director General Labour Relations sends the case file to the Director Industrial Relations.

32. The Director will forward the case file to the Prosecution Unit for drafting of the formal charge.

Conducting of Prosecution

33. Upon receipt of the case file, the Competent Officer will draft the Summon, Criminal Complaint and formal charge (template Summon, Criminal Complaint and formal charge at Annex 27) as well as a certificate, only applicable for offences established in the Employment Act 1995, for the Chief Executive's formal approval to initiate legal action against an offender, informing the offender that the Chief Executive has given her approval to prosecute (template at Annex 28)

34. The Competent Officer will submit the case file with the certificate and the formal charge to the Chief Executive through the Director and Director General Labour Relations.

35. Once the Chief Executive has signed the certificate, the case is filed (submission of the summons, charge, and certificate).

(i) In the case of an offence established under Section 76 of the Employment Act 1995, it is filed at the Employment Tribunal, by a Competent Officer under Section 78(2) of the mentioned Act.

(ii) In the case of old cases being re-filed, it is filed at the Magistrate Court, by a Competent Officer.

(iii) In the case of the Occupational Safety & Health Decree, it is filed at the Magistrate Court by an officer authorised by the Minister in accordance with Section 42 of the said Decree.

36. The Employment Tribunal/Magistrate Court will set a date for the case to be called for the first time.

37. In regards to the prosecution of the offence the process described below is followed in the Magistrate Court or the Employment Tribunal:

(i) Mention: dates are set for preliminary arguments, plea, the service of summons or executions of warrants of arrest, of documents to be used in trial, judgments and sentencing, etc. ...

(ii) Plea: In this mention, the Magistrate Court or Employment Tribunal will read the charge to the offender before the accused pleads guilty or not guilty.

(iii) Trial: the prosecution presents evidence (i.e. submitting documentary evidence, witness testimony) to the said court or tribunal to prove the offence. Thereafter the offender will be given the opportunity to defend himself against the charge and may choose to do so with or without legal representation.

(iv) Judgments and sentencing: The said court or tribunal makes its formal decision on whether the accused is guilty or not guilty. If the offender is found to be guilty as charged the said authority will punish the accused by imposing a sentence. The sentence will be a fine prescribed by law. The following Sections/Regulations are related to the penalties that can be imposed on a convicted offender by the court or tribunal:

- Employment Act 1995: Part XI — Offences, Penalties and Prosecution, Section77 Conditions of Employment Regulations, 1991:Regulations 26,50
- Occupational Safety & Health Decree: Section 37,38
- Occupational Safety and Health (Construction Industry, Confined Space and Welding) Regulations: — Regulation 39
- Occupational Safety and Health (Miscellaneous) Regulations: — Regulation 7

- Occupational Safety and Health (Health and Welfare) Regulations: — Regulation 23

(e) Afford adequate protection and assistance to all victims of trafficking, in particular by providing shelters and launching projects aimed at helping them rebuild their lives or their repatriation

38. The Government of Seychelles shall establish and carry out programs and initiatives to protect and assist all victims of trafficking and to assist in the safe integration, reintegration, resettlement, or repatriation as appropriate, of victims of trafficking, as prevention and awareness programs.

(f) Intensify international, regional and bilateral cooperation to prevent and combat trafficking in persons.

39. The coordination of key Government Ministries and the private sector, together with the national and international partners remains crucial to deal with potential future cases of human trafficking. We need to work on further strengthening inter-ministerial coordination mechanisms at the national level and further enhance co-operation with international organizations and other partners, to combat human trafficking.

40. Seychelles is a party to both the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Government of Seychelles has ongoing cooperation with the United Nations Office on Drugs and Crime, the International Organization on Migration and the Southern African Development Community (SADC) on programmes and technical support with regards to the issue of trafficking in persons.

41. Technical assistance may be requested to UNODC to assist Seychelles to fully implement a comprehensive response to trafficking, not only by ensuring the structures are in place to convict traffickers but also in addressing the realities experienced by victims of such crimes.

42. The relevant technical assistance in fighting against human trafficking that Seychelles would require:

- Assisting the review and revision of domestic legislation concerning assistance and protection of victims;
- Training criminal justice practitioners and service providers on protection of victims of trafficking in persons;
- Supporting Seychelles in the provision of physical, psychological and social assistance to the victims, including cooperation with NGOs and civil society;
- Securing the safety of victims;
- Best-practices on national cooperation structures to prevent Trafficking in Human;
- To develop more effective information and intelligence sharing and increase public awareness.